

BEFORE THE TOWN COUNCIL

MILTON, DELAWARE

TOWN COUNCIL MEETING)
)
DECEMBER 4, 2006)

BEFORE :

MAYOR ED POST
COUNCILWOMAN RONDA MELSON
COUNCILWOMAN LEAH BETTS
COUNCILMAN JOHN FREY
COUNCILMAN ED HARRIS
COUNCILMAN GENE DVORNIC

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2 MAYOR POST: Okay. The last thing under New
3 Business is the Revision of Record Plan Phase II B,
4 Cannery Village. And I'm not -- do they have -- Okay.

5 MR. COBEN: Good evening. My name is Mike
6 Coben. I'm with George, Miles & Buhr, the engineers on
7 the project. And we are here tonight to ask you to
8 approve the Planning Commission's recommendations for a
9 revision to the record plat for parcel II B in Cannery
10 Village.

11 Basically, the purpose of this revision is
12 to change the intersection of Fulham Drive and Village
13 Center Boulevard and the layout of the parcel for the
14 community's clubhouse. It would enable them to go ahead
15 and file for a building permit now so that they can get
16 this amenity ready for the folks that are in the
17 community now.

18 Do you see the dashed line on there? That
19 was the original roadway alignment. It came in at sort
20 of an acute angle to Village Center Boulevard. This
21 layout is a right angle intersection, which should work
22 a lot better from a traffic standpoint.

23 Do I have to answer any questions?

24 MAYOR POST: Well, yes, because I do -- I

1 have -- probably my biggest question -- and again, I
2 don't know who has the responsibility of it. But what I
3 have presented in front of me is a plan, but a plan not
4 signed by the Mayor or Secretary of the Town of Milton.
5 And I'm going to, in the future, starting with this as
6 an example, work from signed plans. And I expect to see
7 signed plans --

8 MR. COBEN: The original, the original.

9 MAYOR POST: -- as it comes to me and to the
10 Council and even with the chronologic changes in the
11 plans.

12 MR. COBEN: You mean the original --

13 MAYOR POST: The original.

14 MR. COBEN: -- correct, Mr. Mayor?

15 MAYOR POST: Yes, the original --

16 MR. COBEN: Okay.

17 MAYOR POST: -- with -- so what I'm looking
18 at is a plan, again, that I know you want to switch
19 property lines, but how do those property lines affect
20 parking in the other parcel? How does it affect, you
21 know, any of the issues? I mean I've noticed with your
22 change in the street, it removes green space, because
23 your parcel kind of intersecting gave some green space
24 over here. And now you'll have a pretty large green

1 space here, I realize. But for the future, I need to
2 see -- I don't know what this is proposed in here.

3 But my real issue is not having the original
4 plans to see the original -- the property lines as they
5 exist and the parking lots and the parking spaces as
6 they exist. And I'm a little confused. Yes?

7 MR. DICKERSON: Sir, does that conclude the
8 presentation?

9 MR. COBEN: Yes, unless there are any
10 questions. And then --

11 COUNCILMAN FREY: There are a lot of
12 questions.

13 MR. DICKERSON: (Unintelligible) because I
14 have some comments.

15 COUNCILMAN FREY: I have a question. I
16 would like to know how many parking places you are
17 losing by moving it. I would like to know if you have a
18 report from the town engineer, a written report from the
19 town engineer.

20 MR. COBEN: I do not have a written report
21 from the town engineer.

22 COUNCILMAN FREY: The planning board didn't
23 have one either, and I really -- I'm a little upset
24 about that. The planning board should have a written

1 report from the town engineer on what your changes are.
2 I'm seeing what you want me to approve here tonight.
3 But I don't see what it used to look like. Do you
4 understand what I'm saying?

5 MR. COBEN: Yes, sir.

6 COUNCILMAN HARRIS: And I kind of agree
7 with --

8 MAYOR POST: Phase II B --

9 COUNCILMAN HARRIS: We need a comparison.

10 COUNCILMAN DVORNICK: Yeah, I agree.

11 MAYOR POST: Phase II B, it is my
12 understanding is that -- Is this where the clubhouse
13 sits?

14 MR. DYER: Excuse me. I believe that the
15 record plans are in your office. They are a matter of
16 record that you have the original approved II B plans;
17 is that correct? Or am I under the wrong assumption?

18 MAYOR POST: Well, I don't have them in my
19 packet.

20 COUNCILMAN FREY: I don't have them in my
21 hand, either.

22 MAYOR POST: And that's what I'm trying to
23 get --

24 MR. COBEN: They are in your office. They

1 are approved --

2 COUNCILMAN FREY: We have to go down and get
3 your plans, when you want us to approve it?

4 MR. DYER: They are approved II B plans.
5 They are recorded. They are of public record.

6 COUNCILMAN FREY: I understand that, but --

7 MR. DYER: And they are in your office.

8 COUNCILMAN FREY: But you want us to approve
9 this.

10 MR. DYER: It's not part of the submission.
11 If you look in the requirements for the submission, it's
12 not part of the submission documents.

13 MR. COBEN: We would have been happy to
14 provide them for you.

15 MR. DYER: It doesn't --

16 COUNCILMAN FREY: You can't tell me how many
17 parking places you are losing?

18 MR. COBEN: No, no.

19 COUNCILMAN FREY: You can't tell me how
20 many -- how much green space you are losing?

21 MR. DYER: We didn't say there were any
22 parking places lost, because we didn't lose any.

23 COUNCILMAN FREY: Oh.

24 MAYOR POST: Is that the map?

1 MR. DICKERSON: If these gentleman are
2 finished, I have a presentation to Council on this
3 subject.

4 MR. DYER: The other thing that I would just
5 like to add is Phase II B with the clubhouse is a public
6 record, and it is approved. What we are asking for here
7 is to move the road and to get a building permit. We
8 went in and asked for a building permit. We didn't
9 agree with the decision. The decision was that it was a
10 substantial change. We do not believe that it is a
11 substantial change. But rather than to argue that, we
12 came forward with the plans, and we also have the plans
13 submitted to Planning & Zoning for the changes to Phase
14 II C.

15 So what you have before you is the
16 recommendation from the Planning & Zoning Commission to
17 allow us to proceed with the construction of the
18 clubhouse and moving the road. That's all that you have
19 before you from the recommendations, from the Planning &
20 Zoning Commission recommendations. Thank you.

21 MR. DICKERSON: Mayor and Council, here is
22 what I can show you tonight with regard to these
23 parcels. Chestnut Properties submitted an application
24 to the Planning & Zoning Commission (unintelligible)

1 site plan approval for Phase II C and a revision to the
2 approved record plan for II B. The application was
3 heard on November 21, 2006.

4 Now, there were two -- the request one was
5 that the Town -- to be referred to Town Council was one,
6 realignment of Fulham Drive and the connection to
7 (unintelligible). What you have here is an approved
8 plan that was signed of Cannery Village with regard to
9 Phase II A and II B, which was signed by -- which was
10 approved at the Town Council meeting on November 21,
11 2004, signed by Mayor John Bushey and attested to by
12 Secretary Ronda Melson, who was secretary at the time.

13 This is the original approved plan, which we
14 have in-house. We were told that a revised plan was
15 with regard to this, of these documents which were
16 submitted and recorded at the Recorder of Deeds' Office.

17 These submissions are dated and state: This
18 map has been approved by the Town Council of the Town of
19 Milton at a meeting held on 12/27/05. It is signed by
20 Mayor John F. Bushey and attested to by Harold Godwin,
21 Secretary. Harold Godwin was not the Secretary of
22 Council at that particular time. Ronda Melson, you were
23 the secretary, I believe?

24 COUNCILWOMAN MELSON: I've been secretary

1 the whole time.

2 MR. DICKERSON: Did you authorize this
3 signature?

4 COUNCILWOMAN MELSON: No.

5 MR. DICKERSON: These remove from this --
6 what we are actually talking about -- Show me that
7 folder on the property. Actually, in these parcels,
8 what it does is removes on the original this lot line,
9 which is shown here. This lot line has been removed and
10 blended into these submissions.

11 But here is what I'm telling you about these
12 submissions. We don't have them. No record of this
13 meeting has ever taken place.

14 MAYOR POST: When was the meeting? It
15 states on there.

16 MR. DICKERSON: December 27, 2005. We have
17 never had a Planning & Zoning Commission meeting, nor
18 did we have a Town Council meeting, as attested to in
19 four signature blocks on these documents --

20 MAYOR POST: On December 27th, which is
21 right after Christmas --

22 MR. DICKERSON: -- which are recorded in the
23 Recorder of Deeds' Office in Georgetown. So here is
24 what I'm telling you. These documents here, as I see

1 it, I suggested to Council, table the request until such
2 time as it is determined that these documents that were
3 submitted to the Recorder of Deeds' Office can be
4 authenticated as being proper and not violating state
5 law, because there is a problem with this recordation.
6 I think it should be tabled.

7 COUNCILMAN FREY: Thank you.

8 MAYOR POST: Have you researched the fact of
9 a meeting held on December 27th?

10 MR. DICKERSON: I have gone back from August
11 or October of 2005 and forward to March of '06. There
12 is no such meeting with this recordation.

13 MAYOR POST: Which I was on Council at the
14 time and --

15 COUNCILWOMAN MELSON: And I was, also.

16 MAYOR POST: And I was in New Jersey that
17 day.

18 COUNCILMAN FREY: Same old, same old.

19 MAYOR POST: Well, what --

20 COUNCILWOMAN MELSON: Can we defer it?

21 MR. DYER: May I speak? May I speak? Thank
22 you.

23 MAYOR POST: Yes, you may.

24 MR. BRADY: Mr. Dyer, for the record, please

1 identify yourself.

2 MR. DYER: Yes. For the record, my name is
3 Preston Dyer. I'm a partner in Chestnut Properties. My
4 request at this point would be I have the request for a
5 building permit for a clubhouse for II B. II B is an
6 approved plan. Irrespective of what Mr. Dickerson just
7 mentioned, II B is an approved plan from when we
8 purchased the property. The addition -- Why are you
9 saying II B is not approved?

10 MR. DICKERSON: Well, first of all, II B
11 (unintelligible) recordation, you've taken the lot line
12 off that property --

13 MR. DYER: No, the original II B.

14 MR. DICKERSON: (Unintelligible) this speaks
15 for itself.

16 MR. DYER: II B, the original plan for II B,
17 is approved. That is absolutely, positively correct.

18 MR. DICKERSON: Do you have it with you
19 tonight, sir?

20 MR. DYER: You have it as recorded in the
21 Recorder of Deeds, and you have it in your office.

22 MR. DICKERSON: (Unintelligible).

23 MR. DYER: Not that one, the one prior to
24 that one, sir.

1 MR. DICKERSON: Can you speak to this one?

2 MR. DYER: I'm not depressing that one.

3 MR. DICKERSON: Because that is where the
4 line is eliminated. That's the next sequence of events.

5 MR. DYER: It was from an additional deed
6 from Mr. --

7 MR. DICKERSON: Mr. Dyer, when did you
8 purchase the property? When did you purchase the
9 property?

10 UNKNOWN SPEAKER: August '04.

11 MR. DYER: August of '04, I believe. I'm
12 not positive of that, but I believe it was August of
13 '04.

14 UNKNOWN SPEAKER: No, it --

15 MAYOR POST: Well, no --

16 UNKNOWN SPEAKER: -- might have been
17 November. November, I think it was November.

18 MAYOR POST: Well, it didn't have -- Who is
19 the third-party? Who is the owner on that one that's
20 December 27th?

21 MR. DICKERSON: It's signed right here as
22 (unintelligible).

23 MAYOR POST: So you must have purchased it
24 after December 27th.

1 MR. DYER: No, no.

2 MR. DICKERSON: Well, he signed it.

3 MR. DYER: He signed as consenting, because
4 it was an addition to the parcel. It was a parcel that
5 he didn't convey at settlement.

6 UNKNOWN SPEAKER: I don't even think
7 that's what they are talking about. I'm not even
8 sure that's --

9 MR. DICKERSON: Well, this says owner
10 certification, I (unintelligible).

11 MR. DYER: May I see? Is there a signed --

12 MR. DICKERSON: Absolutely.

13 MR. DYER: Did Chestnut Properties sign
14 that?

15 MAYOR POST: Yeah. I mean this is what we
16 received today from the -- right? At the County? Is
17 this what we received?

18 MR. DICKERSON: That came from the Recorder
19 of Deeds' Office.

20 MAYOR POST: Today, from the Recorder of
21 Deeds.

22 MR. DICKERSON: Well, the lot line is
23 eliminated, that's why. It's the blending of II C and
24 B. That's why.

1 MAYOR POST: That's confusing.

2 MR. DYER: And if any lot line was
3 eliminated, it was only a phase-in line. What we bought
4 and what the L --

5 MR. DICKERSON: It's not a phasing when you
6 were going to blend it. I'm sorry. That's not what
7 happened here.

8 MR. DYER: Okay. What the LPD approval for
9 is for five -- what we have is 538 units and 10.8 acres
10 of commercial. We're not --

11 MR. DICKERSON: (Unintelligible).

12 MR. DYER: And we are not changing anything.

13 MR. DICKERSON: (Unintelligible) this
14 appears to be -- it's an inappropriate document that has
15 been filed, at least.

16 MAYOR POST: It's the latest document,
17 correct?

18 MR. DICKERSON: At least. This is the
19 recordation, which is inappropriate for these. And you
20 are talking about II B. Doesn't this say II B on it
21 there? That's what it says. It says phases I C, II A,
22 C, B. (Unintelligible) that is what this subdivision
23 says.

24 (Unintelligible)

1 MAYOR POST: I'm very confused on this.

2 MR. DYER: Well, what is -- I'm not
3 following what you are trying to infer. Are we trying
4 to increase the number of units or the amount of
5 commercial? Or what is our intent of a --

6 MR. DICKERSON: (Unintelligible) lot line
7 and you are blending II A (unintelligible) --

8 MR. DYER: And what is the advantage of us
9 doing that?

10 MR. DICKERSON: The advantage is that you
11 are picking up a parcel that wasn't included. You are
12 blending II C with B and trying to get a part thereof.

13 MR. DYER: II C with II B?

14 MR. DICKERSON: That's correct.

15 MR. DYER: So it's the difference in a phase
16 line. Does it increase the 10.8 acres of commercial or
17 the five --

18 MR. DICKERSON: (Unintelligible)
19 modification of the recordation, in my opinion.

20 UNKNOWN SPEAKER: And what would be the
21 advantage to us? Why would we have done that?

22 MR. DICKERSON: I have no idea.

23 COUNCILWOMAN MELSON: It still has to be
24 correct, though.

1 COUNCILWOMAN BETTS: It's got to be
2 corrected.

3 MR. DICKERSON: (Unintelligible) lot line.

4 MR. COBEN: We are actually trying to create
5 a lot line there.

6 MR. DYER: Right.

7 MR. DICKERSON: No, it's eliminated.

8 MR. COBEN: Oh, no. The whole purpose of
9 this is to --

10 MR. DYER: Don't -- I mean you are trying to
11 give the impression like we are trying to pull
12 something, and we are not.

13 MR. DICKERSON: That's my recommendation,
14 and that's how I find it.

15 MR. DYER: You know, it's interesting that
16 you had time to do all that research, but you can't find
17 the plans in your office.

18 MR. DICKERSON: Well, I have the plans right
19 here.

20 MR. DYER: You don't have the recorded plan
21 for II B.

22 MR. DICKERSON: Well, this says II B.

23 MR. DYER: The recorded plot plan for II B
24 showing the units, the clubhouse --

1 MR. DICKERSON: These were the changes made
2 on the December 27th --

3 MR. DYER: That no one has the --

4 MR. DICKERSON: -- meeting that didn't
5 happen.

6 MR. DYER: When you're saying you can't find
7 the plan to compare the simple road alignment change,
8 that you can't find that plan --

9 MR. DICKERSON: Sir, I believe that this is
10 a plan, and anything that goes forward --

11 MAYOR POST: I think we've got to clear this
12 up before --

13 MR. DICKERSON: -- of December 12th of '07 --
14 or of '05 needs to be --

15 MR. BRADY: Yeah, on the Recorder of Deeds.

16 MR. DICKERSON: -- needs to be researched to
17 see which is right, because this is obviously not an
18 authentic copy.

19 MAYOR POST: Well, Merry Christmas
20 (unintelligible).

21 MR. COBEN: This would supersede either of
22 those.

23 MR. DYER: Right.

24 MR. DICKERSON: It would not supersede it if

1 this is a fraudulent document.

2 (Unintelligible)

3 MR. COBEN: A fraudulent document?

4 MR. DICKERSON: Well, not authentic.

5 MR. DYER: Is our signature on there?

6 Chestnut Properties? (Unintelligible)

7 MR. DICKERSON: I didn't say it was, but

8 that's what you are requesting.

9 MR. DYER: It's not.

10 MR. DICKERSON: I mean that is obvious.

11 Here is the document.

12 MR. COBEN: None of the folks standing in

13 front of you were directly involved in that, but --

14 MR. DICKERSON: I didn't say you were, nor
15 have your names been mentioned. But your request coming
16 before Planning & Zoning and then to Council is based on
17 these documents. That's the fact.

18 (Unintelligible)

19 MR. COBEN: That could supersede either of
20 those plats.

21 MAYOR POST: What would you recommend --

22 MR. DICKERSON: I'm only going by what is
23 recorded.

24 MAYOR POST: We are going to let the town

1 solicitor talk.

2 COUNCILWOMAN MELSON: Thank you.

3 MR. BRADY: Hi. To start, the reason the
4 plans in front of you tonight don't have a signature for
5 anybody except for the people who are owner certified is
6 because this is what is proposed.

7 MAYOR POST: I know that.

8 MR. BRADY: And if you were to approve it,
9 you would sign the originals and they would be recorded
10 in the Recorder of Deeds' Office. With regard to
11 documents that were recorded -- that were dated
12 December 27, 2005 that are of record in the Recorder of
13 Deeds' Office, for those of you who don't know it, I'm
14 the Recorder of Deeds.

15 I cannot, without even seeing what has been
16 said -- if they said that they got it from a record of
17 my office, I record what is sent to my office, and we
18 check it. Our process is if I have the signature of the
19 Mayor and then the attests, I don't normally call the
20 Town to see if that is the right person to attest.
21 Okay. It may be the situation where the Town manager
22 attested and improperly attested.

23 But if you believe because I am the
24 custodian of that record, that I would be biased towards

1 my office in recording a document, then I will recuse
2 myself and get you substitute counsel from outside of my
3 law firm to deal with this issue. If you believe that I
4 can handle this issue, then I would like to at least
5 look at the documents that have been issued.

6 As I understand it, in the practice on
7 plats, P-L-A-T-S, and their recording is that they are
8 approved. The original copy comes to my office. It is
9 digitized, and then the original copy is returned to the
10 person who submits that plan or plat for recording.

11 I have a tracking record at the Recorder of
12 Deeds' Office to tell who I returned those documents to,
13 when they were filed, and how they were filed. But
14 because this came to me tonight at eight or 9:06, as we
15 are speaking -- I love real time now on the new
16 recording device -- I can't answer that question.

17 Planning & Zoning relied on the following
18 recommendation that I made two weeks ago. In order to
19 keep the project on track, as was presented, because the
20 developers did timely file -- and when it was filed,
21 they asked -- I was asked for my opinion, and my opinion
22 on II C and II B was that the changes that were proposed
23 in the total application were quote, end quote, under
24 the zoning ordinance to be significant to the point that

1 it would have to go in front of Planning & Zoning.

2 Significant is a word that has -- the common
3 usage thereof is enough of a change, I guess, to make a
4 big difference.

5 And I look at the size. When moving a road,
6 changing what is green, things like that all went into
7 that. But as was said, I looked at the whole
8 application. The application was in the use of a word
9 that has fanned around tonight, subdivided at Planning &
10 Zoning. They modified it at the end of the public
11 hearing to only go forward on the II B.

12 At that point, after significant
13 discussions, Planning & Zoning endorsed the change in
14 the roadway to allow -- and the fixing of the lines to
15 allow the clubhouse building permit to be issued so
16 construction could start at or about the time beginning
17 2007.

18 The Town Council has to make a determination
19 now. Your determination is based on as follows: The
20 recommendation of Planning & Zoning is to be given great
21 weight. If you are to table it --

22 UNKNOWN SPEAKER: Do we have that?

23 COUNCILMAN FREY: I don't know.

24 MR. BRADY: -- reverse Planning & Zoning and

1 remand back, or to do anything else, deny it, you must
2 make -- and these words I got from Gene Bayard when I
3 did my first Planning & Zoning hearing and went to
4 County Council for approval -- you must establish a
5 record by or in your comments to show why the judgment
6 of Planning & Zoning should not be followed and the
7 specific reasons thereto.

8 You have been given information tonight by
9 the town manager and by the proponents of the approval
10 as to each of their positions.

11 Are there any questions on what I've
12 suggested? Yes, Mr. Dyer.

13 MR. DYER: The one clarification I wanted to
14 make of the statement that I said earlier was what we
15 disagreed with was when -- before we had made the
16 submission for II B, we went in and asked for the
17 building permit. The building inspector said that the
18 clubhouse being turned was a substantial change, and
19 that was what I was referring to when I said that I
20 disagreed.

21 I'm not saying that I disagreed with your
22 interpretation, because I believe your interpretation
23 of, you know, those items, you know, if that is what you
24 believed it to be, then that is not what I was referring

1 to.

2 MR. BRADY: Very well. And the record
3 should so reflect.

4 MAYOR POST: And I also want to say that I
5 know when you said -- I mean I'm well aware of why this
6 is unsigned, 100 percent. I also am aware that when my
7 name goes on it, that it becomes the final document.
8 I'm saying -- and I don't care who I'm saying it to --
9 an internal issue, an external issue, I could care less.
10 I am saying when something comes in front of me -- maybe
11 I'm a little dense or something, and I need some help.
12 But the bottom line is that I want to have this overlay
13 to the original one, because I cannot assume, if it's
14 not a signed document, that this is the -- and that's
15 for anybody, anybody coming in front of me -- that this
16 is from the original.

17 All that has been done here is supposedly
18 taking the original and drawing the changes. I
19 understand that clearly. It makes complete sense to me.
20 But I am saying that under this document -- and this
21 could be an internal issue where we need to set new
22 policies and it can even be a pass-through to the
23 developer -- that I should have the original. So when I
24 open this up and reflect -- oh, yeah, this line is, you

1 know, 202.30, oh, yes, there is the same 22 parking
2 spaces as are here, oh, yes, this is correct here --
3 because when I sign off on this, this becomes the new
4 one.

5 And I'm just saying when it is brought
6 forward for me from the municipality, from Robin, that's
7 what I'm going to have to see in the future, because I
8 just -- it's too complicated.

9 Yes, I can run down there, and I can look at
10 a big map and I can see the whole picture. But I can't
11 see it -- it's kind of hard to grasp it with little,
12 tiny writing, compared to what is presented to me in
13 front. And that is just an overall issue of what I need
14 help on as I move forward to make these decisions.

15 COUNCILMAN HARRIS: But can I go back to
16 earlier in this meeting, when I addressed Planning &
17 Zoning? Again, I sit here. I don't know the
18 recommendation from Planning & Zoning. Do any of you?

19 MAYOR POST: Well, it's on that little thing
20 here somewhere.

21 UNKNOWN SPEAKER: It's on there.

22 COUNCILMAN HARRIS: You know, I didn't see
23 it. Maybe I missed it.

24 MAYOR POST: It's there. It's under the --

1 It's on the code enforcement report.

2 COUNCILMAN FREY: Very small, two letters,
3 two words.

4 COUNCILMAN HARRIS: I mean there isn't
5 information. I mean how can you make an informed
6 decision -- Okay. Where are you looking at?

7 MAYOR POST: You'll see it. It's a very
8 condensed -- right there, it says whether --

9 COUNCILMAN HARRIS: Okay. So I'm supposed
10 to base my decision on: Chestnut Properties' Revision
11 of Record Plan, Cannery Village Phase II, Forward to
12 Council, Preliminary Site Plan Approval, Cannery Village
13 Phase II, Table to Next Meeting? That's it? That's all
14 I have.

15 (Unintelligible)

16 UNKNOWN SPEAKER: I saw that.

17 MAYOR POST: And then there's a cover --
18 Well, this is just the memo --

19 COUNCILMAN HARRIS: I saw that.

20 MAYOR POST: -- from Robin Davis.

21 COUNCILMAN HARRIS: But that doesn't give me
22 anything to work with.

23 MAYOR POST: But it just says what this is
24 for. I mean it just -- we need a little bit more help

1 with it.

2 COUNCILMAN HARRIS: Well, I --

3 MAYOR POST: I mean it doesn't matter who,
4 who's coming in front of us.

5 COUNCILMAN HARRIS: Well, I don't know
6 anything about that. But I think in order, personally,
7 to make an informed decision, I need more information.
8 I need more information.

9 MAYOR POST: And it says here, Bob Kerr is
10 reviewing the revised plan and has a contact -- has
11 contacted (unintelligible) Associates to discuss the
12 issue.

13 And again, I'm going to go back to the town
14 engineer, that I think anytime -- and this is internal.
15 You know, I hate to bring you into it. But another
16 internal thing is P & Z needs the written comments and
17 recommendations from our town engineer -- so do we -- to
18 make the right decision. We don't have that in front of
19 us. All we have is something from Compass Point, a
20 letter of transmittal, and we have a little memo about
21 the two things.

22 One is realignment of Fulham Drive and the
23 connection to Village Center Boulevard, which to me is a
24 pretty clear understanding; and then two, realignment of

1 the property lines between II B, parcel A, multi-family
2 dwellings, and parcel B, clubhouse location.

3 And again, when you talk about clubhouse
4 location -- and again, you can go and look at that. And
5 I understand that, Mr. Dyer. But on here, it doesn't
6 show any clubhouse. So we would have to go look and try
7 to find it on the master plan, and then we would have
8 it. But then we have the confusion of the final --

9 MR. BRADY: And you don't have
10 (unintelligible).

11 COUNCILWOMAN MELSON: What plan -- What did
12 Planning & Zoning look at to give their opinion, the
13 recommendation? Was it this?

14 MAYOR POST: No.

15 MR. BRADY: They had a different version of
16 this --

17 MAYOR POST: More detail.

18 MR. BRADY: -- and they had other documents.

19 MR. DICKERSON: That was submitted at the
20 beginning of this week, on the 29th (unintelligible).

21 COUNCILMAN FREY: I would like to make --

22 MR. DICKERSON: That's what you said about
23 (unintelligible).

24 COUNCILMAN FREY: Mr. Mayor.

1 MAYOR POST: Yes.

2 COUNCILMAN FREY: I would like to make a
3 motion that we table it until January, until we get more
4 information.

5 COUNCILWOMAN MELSON: Second.

6 MAYOR POST: Motion, second. Any more
7 discussion?

8 MR. BRADY: Mr. Dyer has a comment, which I
9 think he should be given the opportunity --

10 MAYOR POST: Sure.

11 MR. DYER: In the interest of proceeding
12 with the building permit, nothing has been acted upon.
13 Planning & Zoning asked us to go to -- which I think is
14 a good idea -- a workshop on the 12th. What I would ask
15 Council would be for your consideration of our request,
16 under the original II B, not the one that Mr. Dickerson
17 just brought up --

18 COUNCILMAN FREY: Do you have that?

19 MR. DYER: No, I don't have that.

20 MR. BRADY: Do we have that back here?

21 MR. DICKERSON: Not the one that he's
22 looking at. He's talking about something else.

23 MR. DYER: Mr. Kerr may have it
24 (unintelligible).

1 COUNCILMAN FREY: It's unsigned.

2 (Unintelligible)

3 COUNCILMAN FREY: We have a motion and a
4 second on the floor now.

5 MAYOR POST: Well, is it on this one here?

6 (Unintelligible)

7 UNKNOWN SPEAKER: Mr. Dickerson, what do you
8 have?

9 MR. DICKERSON: This is the original signed
10 document.

11 (Unintelligible)

12 MAYOR POST: And the latest recording is
13 technically the one to go by, which is what you have,
14 which came today from the County.

15 MR. DVORNICK: And you're expecting us to
16 make an informed decision. And there are so many
17 documents floating around here, I don't know what
18 document is -- I'm sorry. You know, does anybody feel
19 comfortable? I mean honestly?

20 COUNCILWOMAN MELSON: I don't. I don't,
21 knowing that I didn't sign it.

22 COUNCILMAN DVORNICK: I mean I, at least,
23 want to look at a legitimate document. There's --

24 MAYOR POST: All of these should have been

1 signed, I know, for the last several -- How many years
2 have you been the secretary, Councilwoman Melson?

3 COUNCILWOMAN MELSON: Four, four.

4 MAYOR POST: Four. Every one of these site
5 plans should be -- It says right here --

6 COUNCILWOMAN MELSON: Well, that is what's
7 confusing me, because I always get a call --

8 MAYOR POST: -- attested by the secretary.

9 COUNCILWOMAN MELSON: -- to come sign.
10 That's why I find it was odd.

11 MAYOR POST: And that's why I say when I put
12 my name on it, I want to also make sure, no matter which
13 one is in front of me, who it is, that I know it's the
14 correct one. I mean this is difficult, I know. But you
15 know, it's (unintelligible).

16 COUNCILMAN DVORNICK: I just have a simple
17 question. Is the total area for Phase II B, paper-wise,
18 changed at all as a result of the realignment of the
19 road?

20 (Unintelligible)

21 MR. BRADY: The engineer has to answer that
22 question.

23 MR. DAVIS: I would have to say yes.

24 MR. DVORNICK: It is?

1 COUNCILMAN FREY: It is changed.

2 UNKNOWN SPEAKER: Yes. Thank you.

3 MAYOR POST: What was your response? Did
4 you respond, Mr. Kerr?

5 MR. KERR: I'm sorry?

6 MAYOR POST: Did you respond to that?

7 MR. KERR: I wasn't asked.

8 MAYOR POST: Okay. Could you respond to
9 that?

10 MR. KERR: Yes, I can.

11 MAYOR POST: Okay.

12 MR. KERR: I think there's a lot of
13 misconception going on on phasing. Cannery Village has
14 many phases. But we are also talking about some parcels
15 with the same nomenclature. So we have a Phase II A
16 that isn't involved this evening, and a II B. In II B
17 we have parcels A, B, and C. And they are kind of being
18 interchanged here, where you are talking about the same
19 thing at different times.

20 What has happened along the way that I was
21 not aware of was parcel C became part of Phase II B.
22 And that's the document that, in going through this
23 review, that I discovered that we had not seen in our
24 records.

1 used to come in at a very poor angle. It was a one-way
2 street because of that poor angle. They have requested
3 that it come in more at a 90-degree angle, and that
4 changes property lines. That's all that's really being
5 requested tonight. It's a long answer, trying to say
6 what happened to the area.

7 The area of II B has increased because of
8 adding this little out parcel that didn't make it the
9 first time. The area inside the road that bounds the
10 property we are talking, because the road moved, that
11 whole little piece of land has gotten smaller. But the
12 land outside of it is still there. It's just on the
13 other side of the street now. So the area really hasn't
14 changed.

15 COUNCILMAN DVORNICK: So parcel A and parcel
16 B of phase II B has a minimal reduction in area as a
17 result of a realignment of the roadway?

18 MR. KERR: Yes.

19 COUNCILMAN DVORNICK: Thank you.

20 MR. KERR: This part used to be over here.
21 (Unintelligible).

22 MAYOR POST: And Mr. Kerr, can I just say
23 something again with what I had said earlier? Wouldn't
24 it be fairly easy and does it not make some sense that

1 even if something is not affected, that if the 11
2 things -- I think there's 11 things required in our site
3 plans to address. And say, for example, parking spaces
4 and if you wrote on there not affected, then we would
5 quickly look at this and say there is no problem with
6 the parking spaces. Instead of assuming or instead of
7 asking -- I mean I just think there's a way that this
8 process could be better working for both the developer
9 or whoever it is coming in front of us and us with
10 having the knowledge to make that decision.

11 And I think the only other question -- and
12 I'm just curious, because is that phase I C, parcel II,
13 which is the large parking lot, the parking lot that had
14 to be -- was required, I thought, as parking and could
15 not be buildable?

16 MR. KERR: I C, which is essentially the
17 parking lot, is an area that is overlaid to make it
18 impermeable so that storm water will not drain into it.
19 It was part of the DNREC cleanup of the site.

20 MAYOR POST: But it was the contaminated
21 area?

22 MR. KERR: Yes.

23 MAYOR POST: Yes. So I mean I was just
24 curious, because I have the DNREC posting at home -- and

1 I want to get a copy of it -- that stated the
2 contamination rate of that parcel.

3 MR. KERR: Right.

4 MAYOR POST: And it's this large --

5 MR. DICKERSON: So actually, the size of the
6 parking lot was dictated by the size of the building
7 being 100,000 square feet, required so many parking
8 spaces per the parking regulation at the time it is
9 constructed.

10 MAYOR POST: So then you are saying that it
11 is a less amount of that space? Is that what you are
12 saying.

13 UNKNOWN SPEAKER: The area -- Well, the
14 whole parcel is under DNREC control. However, the part
15 that is impacted is not the entire parking lot, if that
16 is what your question is.

17 MAYOR POST: Because it stated it had to be
18 parking lot only.

19 MR. KERR: Well, that's because when you
20 enter into the voluntary cleanup program --

21 MAYOR POST: Right.

22 MR. KERR: -- when you do your remedial
23 action, it's prohibited from residential use.

24 MAYOR POST: I mean that is what this thing

1 stated in the back.

2 MR. KERR: Yes. That's what DNREC requires.

3 MAYOR POST: It was like a public hearing --
4 It wasn't a hearing. It was just a notice, but it was
5 pretty lengthy and in detail. Okay.

6 MR. DICKERSON: I have a question for
7 Mr. Kerr.

8 (Unintelligible)

9 MAYOR POST: Yes.

10 MR. DICKERSON: Mr. Kerr, the original plan
11 showed parcel C as part of phase I B; is that correct?

12 MR. KERR: I can't say without looking
13 again. It was not part of parcel II B. What is shown
14 on the drawing this evening as parcel C was not part of
15 parcel II B -- or I'm sorry, phase II B.

16 MR. DICKERSON: The dissertation that you
17 just gave with regard to what the Council was looking at
18 tonight, did you review the corrected division lines of
19 phases I C, II A, II B, and II C before you made your
20 comments to Council just a few minutes ago with regard
21 to it not being effective? Did you review this document
22 recorded in the Sussex County Recorder of Deeds that I
23 have here?

24 MR. KERR: I was -- I received drawings this

1 morning, Fed Ex'd from Compass Point. They are copies
2 of what is recorded. They have a stamp on it indicating
3 that they were reviewed.

4 MR. DICKERSON: Did you review those prior
5 to your comments, is my question?

6 MR. KERR: I reviewed the area in question
7 tonight. I did not review the entire document, going
8 back and looking --

9 MR. DICKERSON: Is not the original --

10 MR. KERR: -- at I A, B, or C, no.

11 MR. DICKERSON: Does not the original site
12 plan have a delineation of the property line that is not
13 shown on the corrected lines, on the corrected division
14 lines?

15 MR. KERR: Yes. There are a couple of lines
16 that have changed, and that is part of the reason that
17 there have been several --

18 MR. DICKERSON: Is that not important?

19 MR. KERR: Yes.

20 MR. REED: If I could just clarify
21 something -- and I'm sorry. For the record, my name is
22 Joe Reed, partner of Chestnut Properties.

23 When we negotiated to buy Cannery Village,

24 this -- and I don't even know what it is. I'll say it's

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1 maybe 10,000 square feet -- I think it is shown as
2 parcel C -- was part of what we contracted to purchase,
3 this II -- guess it is referred to as parcel C.

4 Needless to say, because of all the
5 different parcels and different things, the settlement
6 was a little complicated. The settlement attorney, Eric
7 Howard, somehow made a mistake and went -- and I think
8 if you want to go research it and spend that time -- I
9 think the plan was recorded much later than it should
10 have been. I mean there was a long delay after
11 settlement before the record plan or the documents that
12 should have gotten recorded from settlement did.

13 When we discovered what was recorded and
14 that there was an error in it, this parcel C or that
15 little chunk next to the parking lot, which was always
16 earmarked for commercial use, was not included. That
17 was corrected.

18 Now, from our standpoint, I mean first of
19 all, I resent the fact that -- I mean you are trying to
20 portray as if we are trying to get something over on the
21 Town. And we are not, other than coming in this town
22 and investing tens of millions of dollars. We have been
23 up front with everything.

24

From our standpoint, it would be better to

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1 not have that as part of the Cannery -- any of the
2 Cannery phases. We are limited with the land that we
3 bought at Cannery to 500 -- the remaining 511 units from
4 the 538 original approval -- the 513, I think it is,
5 remaining -- and 10.8 acres of commercial. So we can
6 put that on what we already had without this parcel. By
7 bringing this parcel in, we are now spreading that same
8 amount of units and that same amount of commercial over
9 more land.

10 I mean sitting here and listening to you say
11 this, I'm thinking -- I mean that was just a deeding
12 error that Eric Howard made. I don't care what you want
13 to call it. Actually, it would be better if you don't
14 want to call that part of II C and it is part of I C or
15 it's not even part of Cannery. That's great, because
16 that's another 10,000 square feet of commercial we have
17 in addition to the 10.8 acres and in addition to the 513
18 units.

19 So the more land we want to bring into it,
20 we are not getting -- we are not gaining any more. I'm
21 not -- I just -- I don't follow your logic on what you
22 are trying to prove.

23 MAYOR POST: Well, the logic is not to prove

24 anything. But I'm going to step in here, Mr. Reed. The

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1 logic is that we go by the most recent registered one at
2 the County.

3 MR. REED: Okay.

4 MAYOR POST: And the one that we are showing
5 is December 27th on a Town Council meeting that was
6 never held on December 27th -- that is number one --
7 signed by a Town manager who did not have the authority
8 to sign it as the Secretary for the Town of Milton when
9 Councilwoman Melson has -- that's the issue. It really
10 doesn't -- it addresses you, because it's the product of
11 what we have to work with --

12 UNKNOWN SPEAKER: It's not you.

13 MR. REED: Right. It sound like a problem
14 with Town government.

15 MAYOR POST: -- of what we have to work
16 with. And like I said, when we make a decision, we've
17 got to make sure we know which is right. We want to get
18 the most recent one today. That's what we were given,
19 which is different than the one that sits here.

20 MR. REED: Well, this --

21 MAYOR POST: It's not questioning anybody
22 but the three signatures on that --

23 MR. REED: Well, it is questioning --

24 MAYOR POST: -- on that parcel.

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1 MR. REED: He's making implications.

2 MAYOR POST: It is implicating the decision
3 that we don't have the right product here.

4 MR. REED: Okay.

5 MAYOR POST: That's what it's implicating.

6 MR. REED: Okay. The request before you
7 tonight --

8 MAYOR POST: So however you want to take it.

9 MR. REED: Okay. The request before you
10 tonight has nothing to do with that area. It doesn't
11 have anything to do with this parcel C. We are on a
12 separate path going through approval for that with
13 Planning & Zoning right now, which will then be before
14 you with their recommendation.

15 This realignment of the road and the ability
16 to pull the permit for the clubhouse has nothing to do
17 with whether parcel II C is part of I C or II C. It has
18 nothing to do with this request.

19 COUNCILMAN DVORNICK: Could I ask the town
20 attorney a question?

21 MAYOR POST: Sure.

22 COUNCILMAN DVORNICK: Would this plat
23 supersede either of those plats?

24

MR. BRADY: You give legal -- Legally

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1 speaking, the most recent plat controls. The question
2 that I had for the town manager is what is -- Do you
3 have a plat over there that is 101.313 through 316,
4 because that is what these drawings reference? And that
5 is what I want to check, because that is what the
6 drawings that were signed on 11/28 and 11/29 reference.

7 MAYOR POST: Can you bring it over here and
8 let the town solicitor look at this?

9 MR. DICKERSON: That is the original
10 signed --

11 MAYOR POST: That is the original? Is that
12 the one back when? November or whatever? So this is
13 the original.

14 MR. DICKERSON: Here is the -- here is the
15 one. See the parcel --

16 MAYOR POST: Which is dividing the two
17 parcels.

18 MR. DICKERSON: Okay. Here is your
19 revision.

20 MAYOR POST: Which was dated December 27th,
21 correct?

22 MR. BRADY: (Unintelligible) stamped page
23 number.

24

MAYOR POST: There's one stamped on it. Of

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1 you guys, you mean?

2 MR. DICKERSON: Here is your -- you want to
3 see this one? Here is the same parcel. This is
4 (unintelligible).

5 MAYOR POST: With no dividing line.

6 MR. BRADY: 101. Okay.

7 MAYOR POST: And it is the same parcel,
8 correct, or is it a different parcel?

9 MR. BRADY: This one here -- what I'm trying
10 to do, in this one that is dated --

11 MR. DICKERSON: 12/27.

12 MR. BRADY: -- 12/27/05, if you look at the
13 recording date, it was recorded January 20, 2006. And
14 that has pages 101 through 16, 315, and I'm guessing you
15 have 314 and 313. They are the most recent records that
16 are maintained by the office.

17 The question you've presented tonight is:
18 Did the town manager at that time have the power to
19 attest a signature for where you can't find the minutes
20 for a meeting of 12/27/05?

21 COUNCILMAN DVORNICK: We can go around and
22 around and try to discover --

23 MR. BRADY: Right.

24 COUNCILMAN DVORNICK: -- why or how that

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1 happened. But I'm not sure that it is even relevant.

2 This would supersede it in either case.

3 MAYOR POST: So to have accurate signed
4 documents are irrelevant.

5 COUNCILMAN DVORNICK: No, sir. But this --

6 MAYOR POST: Is that what you are stating?

7 COUNCILMAN DVORNICK: But this would
8 supersede either one of those plats, whichever you
9 choose to believe is correct.

10 MAYOR POST: Well, it might not supersede it
11 if it is not a proper, authorized document. So
12 technically, it might not.

13 COUNCILMAN DVORNICK: If it were not a
14 proper document, then it would revert back to the
15 previous one, and this one would supersede that one.

16 MAYOR POST: And that's where we are in this
17 midst of confusion.

18 MR. BRADY: I guess the question he has
19 portrayed is this, Members of Town Council: If you
20 approve this document, this document tonight would be
21 the new controlling document. That is the point I think
22 he's trying to make. This document references the

23 document that is proper -- when I say it is recorded,
24 according to the numbers and according to the legend

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1 that is on there, it was accepted for recording. And I
2 would use the recording date instead of the signing date
3 that is listed there. The recording date is January 20,
4 2006. I have no idea where that date came from. The
5 two people to ask aren't here.

6 MR. DAVIS: Mr. Mayor.

7 MR. BRADY: I think the town engineer has a
8 comment.

9 MR. DAVIS: Just to add some confusion to
10 it, Mr. Brady indicated that these documents he just
11 looked at were the most recent.

12 (Unintelligible)

13 MR. DAVIS: The one page 315 has been
14 superseded in plat book 103, page 307. So one of these
15 pages has been superseded. It doesn't affect the area
16 being discussed this evening. But I also do have a copy
17 of that that has the recording stamp on it.

18 MR. DICKERSON: I have a question for the
19 town attorney.

20 MR. BRADY: Go ahead.

21 MR. DICKERSON: John, these documents, as
22 they were recorded, if these were less than authentic or

23 improperly signed and recorded, does not state law kick
24 in with regard to a possible violation of these

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1 documents? And I can cite you the section.

2 MR. BRADY: Well, the question becomes --
3 See, you've got a two-fold thing. Do I accept documents
4 for recording? Yes. You are now putting me into an
5 area where you are asking me to certify the documents
6 that I said were correctly recorded.

7 I don't give an opinion on -- I give an
8 opinion on the requirements. If somebody presents me
9 documents and presents the money to record it and it has
10 a signature and then the attest and it looks like it is
11 proper form, I accept it for form. I let people
12 litigate the issue below.

13 If it was that they brought the documents --
14 and this is pure speculation. Say it was a day that
15 they brought the documents, and it was incorrectly --
16 everything was done right. There was some meeting where
17 it was approved, but the wrong date was put on there and
18 it was attested by the wrong person, there is case law
19 to say was the intent of the document -- was it done
20 correctly and was it just the -- what I call the
21 ministerial duties done incorrectly? And does that
22 affect the drawings. Or does that affect the attest

23 part?

24 They are issues that people above my pay

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1 grade that argue that out and people called vice
2 chancellors make a decision. So without all the facts
3 in front of me, I can't make a decision.

4 MR. DICKERSON: Could you do a signature
5 analysis on that, maybe?

6 UNKNOWN SPEAKER: No, but we can have
7 that -- we can have that done.

8 UNKNOWN SPEAKER: I figured you probably did
9 that by now.

10 UNKNOWN SPEAKER: We will.

11 MR. BRADY: I just kicked out two lis
12 pendence because they didn't comply with the statute.
13 And I had to send that notice and record it out, because
14 somebody brought it to my attention. And we made a
15 mistake. There are mistakes made in my office
16 sometimes, yes.

17 So you are asking me to opine on a bunch of
18 different things. And I don't have all the facts.
19 That's why I'm hesitant to opine.

20 MR. DICKERSON: Okay.

21 MR. DYER: Is there not a recorded II B
22 approval that predates the one that Mr. Dickerson is

23 referring to?

24 MR. BRADY: I believe Mr. Kerr said yes.

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1 MR. KERR: Yes. I do not have a signed one,
2 but I believe that it is in the possession of Robin
3 Davis of Sussex County.

4 MR. BRADY: Right.

5 MR. DICKERSON: No. We had it in-house,
6 but --

7 MR. DYER: And all I'm simply asking is for
8 the ability to build the clubhouse on the II B approved
9 portion.

10 MR. DICKERSON: Mr. Dyer, the affect of
11 that, though -- and that request being simply as you
12 have stated it -- I don't think that the Council would
13 have a problem with it. The issue is blending the two
14 parcels together.

15 MR. DYER: It's not -- we are not --

16 MR. DICKERSON: Robin, I'll ask you --

17 MR. DYER: It's not on that. The piece that
18 we are building on is not that.

19 MR. DICKERSON: Robin, please stand and
20 speak to this issue.

21 MR. DAVIS: The original plan that was
22 brought to Planning & Zoning did not spell out parcel A,

23 parcel B, parcel C. The reason it was brought -- when
24 the application was first brought to me, they wanted to

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1 bring everything for site plan review for II C. But
2 they were going to do some changes to II B. They wanted
3 to incorporate, basically, the changes in II B and make
4 them II C. We could not do that, because we already had
5 the approved plan.

6 So that's why we separated the two. We
7 needed a preliminary site plan approval for II C and the
8 revised what we were doing from the approved plan on II
9 B. That drawing that you have in front of you was not
10 submitted until November 29th, after the Planning &
11 Zoning meeting.

12 MAYOR POST: This one here?

13 MR. DAVIS: Planning & Zoning said: Let's
14 go ahead and realign the road and the property line. We
15 will let them do that. We will forward it with our
16 recommendation for approval to Council, just for those
17 two items.

18 But when we received the copy that you have
19 in front of you from Mary from Post Point Associates --
20 Compass Point, excuse me -- me and Bob Kerr talked, and
21 we had a problem with this C parcel. The C parcel was
22 not on the plan of being as part of II B. Whether you

23 are adding it or not is an issue, because you are saying
24 now you want it to be part of II B.

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1 MAYOR POST: Right.

2 MR. DAVIS: And the plan shows -- the
3 original plan that we had didn't.

4 MAYOR POST: And is there a reason that we
5 didn't get what Planning & Zoning got?

6 COUNCILWOMAN MELSON: It sounds to me like
7 we didn't get anything.

8 MR. KERR: I believe the reason you did not
9 see the same drawings as Planning & Zoning was because
10 they came in for site plan approval, not property line
11 approval, thinking that the normal course of action,
12 you go through the preliminary site plan, you go out and
13 get -- prepare the construction drawings. Those get
14 approved. You get final approval for the site plan.
15 And then if there are property lines involved, that is
16 when it would come to Council.

17 In the late hour of that night, Planning &
18 Zoning, working with Mr. Brady, determined that it was
19 really the property lines that were the issue, so that
20 the clubhouse could move forward. It was agreed that
21 the remaining items of the site plan approval would be
22 dealt with at a special meeting held by Planning &

23 Zoning scheduled for next Tuesday. So all the other
24 issues that are on those drawings that they originally

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1 saw will be worked out.

2 COUNCILWOMAN MELSON: II B?

3 MR. KERR: It's almost which comes first,
4 though. If you can't move the property line, can you
5 approve the site plan? Typically, that's the way it's
6 done. But this is -- there's a lot of things going on
7 at the same time. And so your zoning ordinance doesn't
8 specifically spell out how it's done. In the interest
9 of time, this was what was developed that evening. It
10 is simply asking to realign the road and allow the
11 issuance of a construction -- or I'm sorry -- a building
12 permit from Robin so that the --

13 MR. BRADY: This is the final --

14 MR. KERR: -- essential footprint of the
15 building can be started. There are some other issues
16 with the site, such as fencing, landscaping, that still
17 have to be worked out by Planning & Zoning. But at that
18 meeting that night, it was agreed that if Council gave
19 permission so that the building could get started, the
20 rest of the items would be worked out before final
21 approval would be given.

22 COUNCILMAN HARRIS: Just to make sure I

23 heard all of this right, the real area that is affected
24 that you are discussing this evening is Fulham Drive

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1 south, the area south of that?

2 MR. KERR: Correct.

3 COUNCILMAN HARRIS: And the realignment of
4 the roadway took land from another phase and added to
5 it. And what they've done is they've changed -- reduced
6 the amount of acreage on what was parcel II B, where a
7 clubhouse and some housing units were supposed to go on
8 so they could realign the road. So if I take away
9 everything that is above to the north of Fulham Drive,
10 that is essentially what we have been asked to look at.

11 MR. KERR: Correct.

12 COUNCILMAN HARRIS: But yet, you are asking
13 the Mayor and the secretary to sign this plat which
14 supercedes any other plat. And right now, at least from
15 what I can see, which plat are we choosing to supersede?

16 MR. KERR: It would supersede all plats,
17 once this --

18 COUNCILMAN HARRIS: So -- okay. That's
19 correct. So to make an informed decision, back to what
20 I said, I have not had an opportunity to take a look to
21 compare the previous plat to this plat to see if the
22 changes are just basically that road. I'm trusting a

23 dotted line, their dotted line going across this plat,
24 with nothing else to refer to unless someone can give me

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1 something I can take a look at.

2 COUNCILMAN DVORNICK: Well, was there any
3 deviation on the parcel to the south of Fulham Drive,
4 between the original recorded and the incorrect date
5 recorded, from that point south, other than the change
6 there?

7 COMMISSIONER HARRIS: Have they changed this
8 at all?

9 MR. KERR: I understand the question. In
10 the original date -- and I'm sorry. I've forgotten it
11 several times this evening -- there were two parcels.
12 In the December 27th questionable signature document,
13 this line was distinguished. There is no -- this became
14 one large parcel.

15 COUNCILMAN DVORNICK: Okay.

16 MR. KERR: So essentially, they are putting
17 a line back in. It's not in the same place as
18 originally.

19 COUNCILMAN DVORNICK: Why?

20 MR. KERR: Mostly because they have moved it
21 this way to give them --

22 COUNCILMAN DVORNICK: More room.

23 MR. KERR: They lost this portion.

24 UNKNOWN SPEAKER: For commercial?

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1 MR. KERR: No. This is the clubhouse.

2 UNKNOWN SPEAKER: This is the clubhouse.

3 Okay.

4 MR. KERR: This is multi-family --

5 UNKNOWN SPEAKER: Okay. Okay. Okay.

6 MR. KERR: -- that they have decreased here.

7 UNKNOWN SPEAKER: Okay. Okay.

8 MAYOR POST: I don't know. Mr. Kerr or

9 Mr. Dyer can answer this, because I commend you for
10 safety, wanting that road to go straight. So that means
11 when you are straightening that road, all of that spot
12 to the right that would have probably just been green
13 space, because a road went through it, are you going to
14 keep that as green space? It won't be developed? It's
15 my understanding you just want to straighten the road up
16 for safety purposes. Could you --

17 (Unintelligible)

18 MAYOR POST: Does somebody want to answer me
19 that?

20 MR. REED: Most of the parcel is going to be
21 taken up by the clubhouse and the other amenities there.

22 MAYOR POST: No. I know that, because it's

23 impossible to do anything with it, because we are
24 talking about --

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1 MR. KERR: You are talking about the parcel
2 to the north of the --

3 MAYOR POST: -- to the north, which is 1.23
4 acres that will open, taking that road out of that area.

5 UNKNOWN SPEAKER: This is the old one.

6 MAYOR POST: So that's going to remain green
7 space?

8 MR. DYER: No.

9 MR. KERR: No.

10 UNKNOWN SPEAKER: Commercial.

11 MR. KERR: It is part of the commercial area
12 in the Phase II, so you are moving the road and getting
13 more commercial.

14 MAYOR POST: So we are not talking about
15 safety. We are talking about more --

16 (Unintelligible)

17 UNKNOWN SPEAKER: We can't get more
18 commercial.

19 COUNCILMAN HARRIS: Okay. Okay. I'm just
20 asking.

21 (Unintelligible)

22 COUNCILMAN HARRIS: I'm not against you.

23 I'm just asking questions.

24 COUNCILMAN DVORNICK: It's limited to 10.8

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1 acres.

2 COMMISSIONER HARRIS: Take it easy. I'm
3 just asking, information, just information. Okay. But
4 you see where we are concerned, because we didn't get --
5 we don't -- personally, we didn't have this. I didn't
6 have this.

7 UNKNOWN SPEAKER: I cannot completely
8 understand this. This is very confusing.

9 UNKNOWN SPEAKER: And now there is all of
10 this out in the air about the legality of whether or not
11 these documents were signed inappropriately, I mean you
12 are looking at lay people. You are not looking at
13 architects that are dealing with plots. And all of
14 these questions are running around in our head now.

15 MR. DYER: But I can really try to simplify
16 it. The question that I asked before, I'll ask again.
17 And that is the original II B approval, we have an
18 approved site plan -- and this is what I disagreed with
19 with the building inspector. We filed for a building
20 permit. We have an approved site plan. Mr. Kerr's
21 comment with regard that was made at the Planning &
22 Zoning was that he didn't believe that it was final,

23 because it didn't show a fence around the pool.

24 MR. KERR: For the clubhouse.

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1 MR. DYER: For the clubhouse.

2 MR. KERR: Yes.

3 UNKNOWN SPEAKER: Ten fourplexes for the
4 clubhouse.

5 MR. DYER: And there were ten fourplexes in
6 that area and the pool and the clubhouse.

7 UNKNOWN SPEAKER: Yes.

8 MR. DYER: At that point, and that's where I
9 would like to go back, to that point -- so we don't have
10 to regurgitate all of this other stuff that has been
11 talked about -- is what I'm asking Council would be to
12 reconsider the ability for us to build the clubhouse.

13 What changed is the clubhouse was rotated.
14 On the plan that you see there and the approval and, in
15 fairness to the building inspector, yes, it did rotate
16 and the configuration of it did change. So that, you
17 know -- I'm giving you what I believe to be an accurate
18 description of that.

19 MAYOR POST: Now --

20 MR. DYER: The decision was made that that
21 was a substantial change. Again, that wasn't a call
22 that I agreed with, but it was a call that at that

23 point, we had to do something different, which was then
24 to come back -- we had planned on beginning the

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1 clubhouse and then coming back and going through all of
2 these other things so that we would have the time. And
3 admittedly, it is so confusing that, you know, it's a
4 good thing that you have Mr. Brady, who is the Recorder
5 of Deeds, as your counsel.

6 But with that notwithstanding, we would just
7 like to have the ability to proceed. And that's what we
8 asked for Planning & Zoning, and that is what Mr. Brady
9 understood us to ask for, to be able to proceed with
10 that, the reason being is that we are spending a lot of
11 money at Cannery Village. We are trying to keep the
12 momentum. We are trying to keep the sales going. And
13 that really is the most important issue.

14 We agree that we need to go back to the
15 workshop. You know, we understand all of these issues.
16 You know, we don't have a problem with coming forward
17 with those things. We really would like to have the
18 ability to start the clubhouse. The rest of these
19 things, you know, we can review -- you know --

20 COUNCILMAN HARRIS: I don't think anybody is
21 trying to think -- saying that you are trying to sneak
22 something in. It's just that it's difficult to make a

23 informed decision when you don't have the proper tools.

24 MR. DYER: I understand that. But it's

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1 also --

2 COUNCILMAN HARRIS: And then when you muddy
3 the waters on top of it --

4 MR. DYER: I know.

5 COUNCILMAN HARRIS: I mean there is so much
6 going on here now.

7 MR. DYER: Well, but from our perspective,
8 to hear that we are talking about fraudulent documents,
9 you know, as a member of the Bar, that really concerns
10 me. I'll be honest with you. And you know, I asked
11 Mr. Brady if he heard that.

12 COUNCILMAN HARRIS: Well, I don't know if he
13 was referring to you or somebody else.

14 MR. DYER: It doesn't matter. For
15 statements to be made like that --

16 MAYOR POST: Well, let me make it -- Mr.
17 Dyer, let me state this, that the Town Manager of the
18 Town of Milton does not have the authority to sign a
19 document. You can call it whatever you would like.

20 MR. DYER: I didn't call it anything.

21 MAYOR POST: And you are an attorney.

22 MR. DYER: The town manager called it

23 fraudulent.

24 MAYOR POST: But we are stating that --

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1 COUNCILWOMAN BETTS: It could be.

2 MAYOR POST: -- it could be fraudulent. You
3 can read it however you would like.

4 MR. DYER: He said --

5 MR. KERR: Yes.

6 MR. DYER: He said a fraudulent document.

7 MAYOR POST: Well, as far as I'm concerned,
8 it is not a legal document.

9 MR. DYER: It's on the record. It's a good
10 thing it's being taped.

11 MAYOR POST: As it stands tonight, I do not
12 call that a legal document.

13 MR. DYER: Well --

14 MAYOR POST: If our attorney, by next month,
15 tells us it's a legal document, I'm fine with it. So we
16 will request either him or independent counsel --

17 MR. DYER: I don't have any problem with
18 that. All I'm --

19 MAYOR POST: -- to decide whether, if you
20 are questioning the issue of it --

21 MR. DYER: -- asking for is the ability to
22 go forward with the building permit. I'm not disputing

23 any of that.

24 COUNCILMAN DVORNICK: Mr. Brady, I have a

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1 question. Is it possible for Council to grant the
2 permission to issue a building permit on what was
3 originally parcel II B under the non investigated
4 documents --

5 UNKNOWN SPEAKER: Without altering the plat.

6 COUNCILMAN DVORNICK: Without having to --
7 and that gives time for all of this paperwork to be
8 resolved.

9 MR. KERR: Right.

10 COUNCILMAN FREY: And if it doesn't get
11 resolved, what happens?

12 COUNCILMAN DVORNICK: And is that the same
13 thing -- Pardon me?

14 COUNCILMAN FREY: And if it doesn't get
15 resolved, what happens?

16 COUNCILMAN DVORNICK: Well, their clubhouse
17 will be stuck on a parcel that is sitting that --

18 MAYOR POST: Isn't subdivided.

19 UNKNOWN SPEAKER: Right.

20 COUNCILMAN DVORNICK: -- that is sitting
21 right there. It has a road that goes up to there.

22 UNKNOWN SPEAKER: Right.

23 MAYOR POST: Because if that is an accurate
24 document, then it would mean the clubhouse would be part

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1 of those other dwellings to the right and will just hang
2 out there.

3 MR. DYER: It is all part of Cannery
4 Village.

5 MAYOR POST: Right.

6 MR. DYER: I mean it's all part of Cannery
7 Village.

8 MAYOR POST: But I'm curious, also, with
9 making decisions. But whether, you know -- you know,
10 the solicitor can say it doesn't matter. It's not a
11 part of our decision. But okay, you are turning it.
12 You are doing more than turning it. You are carving a
13 lot of land off of it from the clubhouse; you are. You
14 are --

15 MR. DYER: You are talking about the road.
16 I'm not talking about the road. I'm talking about the
17 clubhouse.

18 MAYOR POST: Have you -- okay.

19 MR. DYER: We are going back to the original
20 configuration.

21 MAYOR POST: Okay. But just wait. Now, I
22 saw -- I saw one document. And this is the problem,

23 because it's like, you know, putting a puzzle together.
24 You had a gazebo with the clubhouse. Do you still have

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1 the gazebo with the clubhouse? Do you still have the
2 gazebo with the clubhouse?

3 UNKNOWN SPEAKER: Yes, sir.

4 MAYOR POST: And so it's going to remain?
5 There is a huge like brick area that looked like a
6 barbecue area. It looked like that in one of these
7 documents. So we are not changing any size in the
8 approved clubhouse at all by square footage. Is it
9 getting bigger, or is it getting smaller in the building
10 itself --

11 UNKNOWN SPEAKER: In the clubhouse?

12 MAYOR POST: -- in the building itself.

13 UNKNOWN SPEAKER: It's getting bigger.

14 MAYOR POST: So it is possibly bigger, the
15 clubhouse. Okay. Now, in the square footage of the
16 green space, is that smaller or is that bigger? The
17 green space which would even include parking spaces for
18 club members, which do take quite a bit of parking at
19 clubhouses. But is that green space less square footage
20 or more square footage with changing this, as the
21 document reads, here?

22 MR. DYER: That one --

23 MAYOR POST: With yours.

24 MR. DYER: What is --

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1 MAYOR POST: With what you are asking.

2 MR. DYER: What has happened, yes, that -- I
3 think that is probably referred to as parcel B by the
4 realignment of that road, which I don't -- I think the
5 engineer never liked that road anyhow, the way it --

6 MAYOR POST: The road is fine straight.
7 That is not a big issue.

8 MR. DYER: Okay. Okay. Yes, that created a
9 more rectangular and larger parcel there, I think as
10 probably shown as parcel B. Yes, our intent there and
11 what we are going through site plan approval for is to
12 put some little shops there, which is consistent with, I
13 think, the LPD, the original concept for Cannery
14 Village, Livable Delaware. I mean that's what everybody
15 wants.

16 And the other thing that has changed is you
17 had what was going to be Dogfish's approximately -- Gene
18 can probably attest to this number -- but somewhere
19 around 60 to 90,000 square foot warehouse that when we
20 bought the property, Mr. Draper was planning on doing
21 some kind of a retail there or an antique mall or
22 something that was going to utilize that large parking

23 lot.

24 MAYOR POST: I remember that.

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1 MR. DYER: Now that is all warehouse. Sam
2 is not utilizing that parking lot. We thought: Well,
3 since, you know, every land planning seminar that we
4 have gone to says, you know, you want this little
5 boutique commercial within, you know, a typical
6 (unintelligible) type of development, since you've got
7 this gigantic parking lot there, 359 spaces or so,
8 doesn't it make good planning sense to do some shops
9 there, utilize that parking lot? So yes, that is the
10 plan for that.

11 Now, we are limited to 10.8 acres of
12 commercial over the whole Cannery Village project. So
13 if you want to say we are losing some green space there,
14 you are probably correct. But it's going to be picked
15 up somewhere else, because there can only be so much
16 commercial in Cannery Village. And I can't think of a
17 better spot to have it than next to that parking lot.

18 UNKNOWN SPEAKER: Or being able to use,
19 utilize the parking lot that would remain empty,
20 otherwise.

21 MR. DYER: Right.

22 UNKNOWN SPEAKER: And we would have to

23 provide that parking somewhere else.

24 MR. DYER: Right.

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1 MAYOR POST: All right. In connection with
2 phase II B, you have how many fourplexes? Quadplexes?
3 Did you say ten quadplexes?

4 MR. DYER: Well, what was approved on the
5 plans that we've come up with, in that area where the
6 clubhouse is, in that parcel are ten fourplexes. And we
7 are already approved there.

8 MAYOR POST: And are you planning on
9 continuing with ten fourplexes there?

10 MR. DYER: No. The market has changed, and
11 we are going through site plan approval to submit a
12 different building. If you find that appropriate to
13 approve, that's the way we will go. If you don't, then
14 I guess we will have to build the ten fourplexes.

15 MAYOR POST: Okay. So there's ten that are
16 by four, which is 40 units?

17 MR. DYER: Correct.

18 MAYOR POST: And what was your plan on
19 expansion, too? Do you know that?

20 MR. DYER: We have a plan that Mr. Coben was
21 asked tonight that was 48.

22 MR. COBEN: 48.

23 MR. DYER: So that's four 12-unit buildings.
24 But again, we are limited to 513 units. So --

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1 MAYOR POST: I very well understand. I very
2 well understand that.

3 MR. DYER: So we are got gaining density.
4 We are not gaining units in Cannery Village.

5 MR. KERR: These are all issues that
6 Planning & Zoning has taken up already in considerable
7 detail, and we are going to have another meeting with
8 them. (Unintelligible).

9 MR. DYER: This is really -- this II C, as I
10 will refer to it, is the only section of Cannery that
11 really Mr. Kerr is reviewing. I think his comment is
12 phases III A and IV have already -- are pretty well
13 engineered and very close to final. This section, II C,
14 which we are kind of starting the process on now, is
15 about the last phase to go through and get finals for
16 site plan approval.

17 MAYOR POST: Now, the clubhouse, all you are
18 doing is turning it?

19 MR. DYER: It was facing that corner. Now
20 it's turned and facing -- I don't even know the name of
21 the street.

22 MAYOR POST: So you are just facing it to a

23 different street?

24 MR. DAVIS: Mr. Mayor, if I may?

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1 MAYOR POST: Yes.

2 MR. DAVIS: The record to the clubhouse, the
3 original plans were brought to me. I referred or talked
4 to Bob Kerr about it and talked to the previous
5 (unintelligible) Eric Evans. The clubhouse was just an
6 item on the drawing. It was never approved, from what I
7 gathered from Mr. Kerr and Eric Evans. I was not a part
8 of the original approval process for all of this, so I'm
9 playing catch-up on all of this.

10 I was told it was part of the plan, just to
11 show what it's going to look like. But it was never
12 part of the approved process, is what I'm being told.
13 And it wasn't just because it was being switched.

14 MR. COBEN: I think --

15 MR. DAVIS: And it was significant with what
16 Mr. Dyer is saying. I did not say that. I suggested
17 you switch it, but it was never approved from what I was
18 told.

19 MR. COBEN: I think I think that probably
20 both of these gentlemen would agree, though, that what
21 is shown there now is not as -- is very similar in
22 character to what was originally shown on

23 the --

24 MR. DAVIS: Yes, what is shown. I'm not

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1 saying that there was a major change there. But we are
2 talking about approval compared to what was being shown.

3 MAYOR POST: And which comes back to the
4 issue of not having the overlay with the original to see
5 that it is very similar to what it was originally. And
6 that creates an issue with why it is good for us to have
7 both -- even when it goes to P & Z, so you can see that
8 it is not much of a change, you know, or it could be a
9 major change. But one or the other, you get a good
10 idea.

11 MR. DYER: In fairness to us, I would say in
12 my experience in other municipalities and in the county
13 is that you submit -- I mean that is typically something
14 that their department does within. And that is, my
15 understanding, a part of the reason our building permit
16 fees went up 400 percent was that there was -- you were
17 growing and you needed additional staff to keep up with
18 these kinds of things. I mean we just went from
19 three-quarters of a percent to three percent every time
20 we build a house. These administrative things to
21 prepare -- give you a package with what is reported at
22 the town hall versus what we are submitting --

23 MAYOR POST: I agree.

24 MR. DYER: -- I mean with other

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1 municipalities, that's not for us to do. The other
2 thing I have a concern with is in the clubhouse -- I
3 don't know. Obviously, I'm very disappointed. But I
4 just don't understand why -- I mean we kind of look at
5 this as kind of a partnership with the Town, I mean.
6 And in all our efforts, we have another project going
7 where there is no -- we just don't feel like you're
8 working with us at all. It's like you are working
9 against us, and all we are doing is investing the money
10 and trying to do something nice for the Town. You know,
11 we could -- I believe we could do it a lot less
12 attractive and a lot cheaper. We're trying to do the
13 right thing. And we would just appreciate a little, you
14 know, a little cooperation. And sometimes there has got
15 to be a little give and take.

16 MAYOR POST: And you know, I agree with you.
17 But on our part, too, especially for me, if my name is
18 going on something, I'm going to make sure it is
19 accurate. So I agree with you. And you know, I don't
20 think, you know, for anybody questioning something --
21 which I've heard this regarding board of adjustment
22 meetings, Planning & Zoning -- I know there was a day

23 here that nothing was questioned. But we are
24 questioning --

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1 MR. DYER: Not since we have been in this
2 Town.

3 MAYOR POST: Well, yeah, okay. Well, you
4 know, I'm just saying that I do question what I'm going
5 to put my name to.

6 MR. DYER: Right, fine.

7 MAYOR POST: But do I have a real problem
8 with it? But there are procedures, whether it is
9 internal or external. And you know, you can talk about
10 our permit fees or whatever you want. But our
11 ordinances say, also, what we can pass through and what
12 we cannot pass through to the developer.

13 But I just want to say, though, that when I
14 read this -- you can say it's internal or not. It is
15 quite simple to be able to see the original copy behind
16 it. Instead of looking at one that is unsigned that
17 when I put my name on it, it is going to be the new one,
18 just like we are addressing from a date that never
19 happened at a Town Council meeting that never happened
20 on December 27th. Those are issues. And we have to
21 clear those issues up as we move forward, that things
22 are done right.

23 UNKNOWN SPEAKER: We didn't know we --
24 MAYOR POST: I'm not saying that. That's

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1 the thing.
2 MR. DYER: Well, I would --
3 MAYOR POST: That's not the issue.
4 MR. DYER: I would like to suggest --
5 MAYOR POST: It's the issue of
6 (unintelligible) issues.
7 COUNCILMAN DVORNICK: Has Council had a
8 chance to answer my question with respect to the
9 issuance of the building permit on the parcel?
10 MAYOR POST: See, here -- that is the
11 gazebo? My eyes are bad. But there is the gazebo,
12 right? (Unintelligible) there was one that -- I know it
13 had a gazebo on it or something.
14 UNKNOWN SPEAKER: It does now.
15 MAYOR POST: Oh, it does now. No, that's
16 not the issue. It's just that I would like to see the
17 changes and what is the reasoning? It's because like
18 you say, the street, certainly to me, doesn't make a
19 major -- it makes sense to make it straight instead of
20 crooked. I'm not questioning that. But -- so before it
21 faced this way, and now you are just trying to design
22 the parcel --

23 UNKNOWN SPEAKER: To this corner.

24 MAYOR POST: -- to this corner. And now you

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1 are trying to design this clubhouse --

2 UNKNOWN SPEAKER: This was the old.

3 MAYOR POST: Right.

4 (Unintelligible).

5 MAYOR POST: And see, this would be helpful.

6 Again, it is an internal issue, as well. But this could

7 be helpful when we are reviewing these things. And as

8 we move forward, that's how it is going to have to be.

9 But can we -- I guess Councilman Dvornick would like to

10 know: Can we approve -- obviously, you have -- does he

11 have -- Robin --

12 MR. DAVIS: Yes.

13 MAYOR POST: -- or Mr. Kerr, does he have

14 approval on that site for the clubhouse?

15 MR. KERR: The recommendation of Planning &

16 Zoning the other evening was to recommend to Council to

17 allow the relocation of the property lines and allow a

18 building permit to be issued with the final details of

19 the site plan to be worked out at the meeting next week.

20 COUNCILMAN DVORNICK: How can a building

21 permit be issued before the site plan finalization is --

22 (Unintelligible)

23 MR. KERR: The general location of the
24 building is agreed upon.

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1 MR. DYER: I think the argument from our
2 standpoint would be if you look at the approved plans,
3 which he has right there and that are in Town hall and
4 that have been recorded for phase II B, in that parcel
5 is the ten fourplexes and the clubhouse.

6 The clubhouse has gotten spun about 45
7 degrees. And I guess what I'm hearing what I think we
8 would like to request is that we have the ability to
9 pull that permit, that we agree as part of the approval
10 for II B, there was a clubhouse shown on that, signed
11 off by the Mayor, the town secretary. And I think it
12 was probably Tom Draper that might have still been the
13 owner at the time. I'm not sure.

14 And we are really at risk, as I see it,
15 proceeding with this clubhouse, if you place the
16 condition that we are going to let you get started, but,
17 you know, we are proceeding and we can't get our CO or
18 our final approval until we have the site plan
19 provisions. Otherwise, we are locked into sticking with
20 those ten fourplexes on that parcel.

21 But I mean, you know, that's all we are
22 asking. We are trying to deliver the homeowners the

23 clubhouse and doing it to try to keep -- get sales and
24 get our money back for the clubhouse up. It is for the

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1 community. It's, in turn, good for Milton. It's good
2 for tax revenues. But --

3 (Unintelligible)

4 MR. DYER: But if you can find or I think we
5 can agree in some way that we can proceed with what is
6 already approved, I don't think it is substantially
7 different. It is just turned. And then, you know, if
8 the road doesn't get realigned, we will -- what we are
9 going through with those other changes in II C, I don't
10 see how that affects the clubhouse.

11 MAYOR POST: As our town engineer, I'm going
12 to also put you on the -- What is your recommendation?

13 MR. KERR: I agree with the recommendation
14 that Mayor and -- I'm sorry -- Planning & Zoning meet
15 where they recommended to realign the street and provide
16 a new property line separating the multi-family -- at
17 one time they were fourplexes -- from the proposed
18 clubhouse site. And that was what we recommended or
19 that's what Planning & Zoning recommended the other
20 evening.

21 When I received this plan, last Thursday
22 afternoon was when the alarm started going off that

23 there were problems. I called Compass Point, and we
24 discussed it. And that's when I found out about the

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1 December 27, '05 plots. In talking to Robin and
2 communicating with Mr. Brady -- the legalities, I don't
3 go near -- but the actual plan, as far as being correct,
4 I asked Compass Point to add a couple of dimensions. It
5 makes it easier for the next person. But other than
6 that, the plan is for the area we are talking about,
7 correct.

8 If in the review of the next part we are
9 doing, which is I C -- I'm sorry, II C, phase II C -- if
10 we find that there is an error with this, we will take
11 care of it at that point. This -- where all of these
12 phases come together has been a confusion point since
13 the beginning. And it happened at the time that the
14 transfer between the parties was happening. It needs to
15 be addressed. It needs to be cleaned up.

16 But if Mr. Brady agrees that it is legal, I
17 would suggest that you allow the construction of the
18 clubhouse to proceed, and we will iron out the details
19 of this record plan changing the road alignment, along
20 with the site plan approval to Planning & Zoning. I
21 just don't know if you can legally do that.

22 COUNCILMAN DVORNICK: Well, one thing that

23 makes it very confusing is what exactly you are asking
24 approval for. If your phase to the north of Fulham had

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1 no black outline, this wouldn't even be an issue.

2 UNKNOWN SPEAKER: That's what I expected to
3 see the drawing from.

4 UNKNOWN SPEAKER: Correct, correct.

5 COUNCILMAN DVORNICK: Because what you have
6 described and what Planning & Zoning recommended deals
7 with everything to the south.

8 UNKNOWN SPEAKER: Right.

9 UNKNOWN SPEAKER: This on what -- Can you
10 hear me?

11 UNKNOWN SPEAKER: We are fine.

12 MR. KERR: What was shown on the site plan
13 that Planning & Zoning reviewed appeared that this was
14 going to be a big part of phase II C. It was when I got
15 the drawing from Compass Point that indicated it was
16 part of II B that I didn't know how that happened.

17 COUNCILMAN DVORNICK: Well, I think in the
18 interest of protecting the Town, taking that off of
19 anything to be signed deals with the parcel that exists,
20 and it truly is a reduction --

21 UNKNOWN SPEAKER: Right.

22 COUNCILMAN DVORNICK: -- of the parcel by a

23 realignment of the roadway --

24 UNKNOWN SPEAKER: Right.

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1 COUNCILMAN DVORNICK: -- allows the ability
2 to begin construction of the facilities or the issuance
3 of the building permit.

4 UNKNOWN SPEAKER: Maybe a motion could be
5 made that approves II B parcel A and B only and Fulham
6 Street.

7 COUNCILMAN DVORNICK: Well, and that a
8 requirement be that the submitted document for signature
9 not have that on it.

10 UNKNOWN SPEAKER: Right.

11 UNKNOWN SPEAKER: That's fine, because we
12 are going through all that with the approval for II C.
13 Yes, I agree with that.

14 (Unintelligible)

15 MAYOR POST: And this is two-part, too.
16 It's Fulham Drive, and it's for the change of Fulham
17 Drive, moving it from angling to straight. And the
18 second part is the line, the shifting of that line,
19 also, to bring the two parcels.

20 UNKNOWN SPEAKER: (Unintelligible) worth
21 coming back here, but these two parcels and the rest of
22 this road, the balance of the (unintelligible) confusion

23 with II B. (Unintelligible)

24 MAYOR POST: It did.

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1 (Unintelligible)

2 UNKNOWN SPEAKER: (Unintelligible) approved
3 tonight, what we have is green space and not approved
4 the parcel.

5 MAYOR POST: So we have killed this
6 discussion to the max. So now let's decide: Does the
7 person who made the motion want to rescind the motion?
8 Well, we have a second on the motion.

9 MR. BRADY: According to charter and the
10 parliamentarian, you have a motion and you have a
11 second. If you want to kill that motion, it will either
12 have to be withdrawn or you vote that down and then make
13 another motion.

14 COUNCILMAN DVORNICK: Can we restate the
15 motion?

16 MAYOR POST: No. You've got to rescind the
17 motion.

18 COUNCILMAN DVORNICK: No, restate it. I
19 want to hear it again.

20 UNKNOWN SPEAKER: Well, that was about an
21 hour ago.

22 MAYOR POST: Yes, that was about an hour

23 ago. Yes, what was the --

24 COUNCILMAN FREY: I have a question for

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1 Robin. When was the clubhouse approved?

2 MR. DAVIS: As I stated before, I do not
3 know --

4 COUNCILMAN FREY: So we are going to vote on
5 something that wasn't approved.

6 MAYOR POST: What you are addressing is
7 technically, if it's not approved, that is a separate
8 issue. All you are addressing is the street change and
9 the alignment, the property alignment between the two.
10 So quite frankly, that is another whole thing. They
11 will have to come back and get approval for the
12 clubhouse if it's never been addressed.

13 So technically, that, too, is kind of a
14 separate issue. The issue is we have to know whether it
15 has or hasn't. And there is a lot of that. And you
16 have to just bear with us, as well. I know it's
17 frustrating for you, as well.

18 But that, to me, I look at as kind of
19 separate. That's just me, because if it doesn't get
20 approved, then there wouldn't be any clubhouse, so if
21 it's not been approved. If they've got a way that says
22 that it has been approved, then they build as it exists

23 or they can do it change. And that's taken care of at
24 P & Z anyway, with that.

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1 So I'm saying that that's kind of a little
2 partially -- I don't want to say it is irrelevant,
3 because it is a picture to the big picture. But I'm
4 just saying that it doesn't really mean anything,
5 because all you are asking is that it change that
6 alignment.

7 COUNCILMAN FREY: You are asking for the
8 building permit, also.

9 MAYOR POST: Well, that is what -- Robin
10 will have to determine whether he can issue a building
11 permit if it hasn't been approved.

12 COUNCILMAN FREY: If it hasn't been
13 approved --

14 MAYOR POST: If it's not be approved, then
15 that is something Robin and the town manager will have
16 to address.

17 COUNCILMAN FREY: I'm not going to withdraw
18 my motion. We will vote on it. My motion was put this
19 off until January, until we can get it straightened out,
20 get some more paperwork on it and get it straightened
21 out.

22 LIEUTENANT CORNWELL: Can I say something?

23 Looking from this from the police department, it seems
24 like everything has been done from actual documents that

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1 were filed on December 27, 2005 up to this point that we
2 can't say they are official. They can be -- So the
3 Council needs to look at: Are you going to approve
4 something from documents that haven't been verified to
5 be official?

6 Apparently, there has been -- and there is
7 going to have to be an investigation as to whether there
8 is criminal conduct, not on the part of the gentlemen
9 here tonight, but upon the three people that signed that
10 document that's filed over at the Recorder of Deeds.

11 So my question or what I'm saying is: How
12 can you vote on something done with this, if everything
13 is based upon that? That needs to be addressed first,
14 if you ask the opinion of the police department. As to
15 whether they get a permit or not, first we need to
16 square away the other thing instead of looking back and
17 getting everything confused.

18 MAYOR POST: Okay. We have a motion, and we
19 have a second. Certainly, we have discussed it. So all
20 right. All of those in favor to --

21 COUNCILMAN FREY: Roll call vote, please.

22 MAYOR POST: -- defer to the January meeting

23 and have this, hopefully, finalized on our January
24 agenda.

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1 Roll call, Councilman Frey?
2 COUNCILMAN FREY: Yes.
3 COUNCILWOMAN MELSON: We need a motion.
4 MAYOR POST: I thought we had a motion an
5 hour ago.
6 Councilman Harris?
7 COUNCILMAN HARRIS: Yes.
8 MAYOR POST: Councilman Dvornick?
9 COUNCILMAN DVORNICK: I vote no. And the
10 reason that I vote no is I think it was established that
11 the area that they are discussing was approved before
12 the documents in question were approved and the
13 realignment of the drive reduced the acreage that was
14 initially approved.
15 MAYOR POST: But I think -- yes, that's
16 fine. That's fine.
17 Councilwoman Melson?
18 COUNCILWOMAN MELSON: I agree to defer it
19 until final --
20 MAYOR POST: Councilwoman Betts?
21 COUNCILWOMAN BETTS: I agree to defer it,
22 because I am not familiar with it. I just would rather

23 look it over.

24 MAYOR POST: And I myself will say yes,

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1 simply because I would like to have all the facts in
2 front of me. It is not that I am not in agreement with
3 this. But I want to have -- I want to get this clear in
4 January on the document with that.

5 UNKNOWN SPEAKER: I would just ask one last
6 quick thing.

7 MAYOR POST: Sure. And the motion carried.

8 UNKNOWN SPEAKER: Yeah. If we can prove
9 through a document that that phase, those ten fourplexes
10 and the clubhouse was approved as part of II B, would
11 Council at least give some direction maybe to the
12 building department that if, in fact, you know, we
13 document that the clubhouse and those fourplexes were
14 approved, that the turning of it to orient to the other
15 road, turning it 45 degrees, is not a substantial change
16 and something that possibly we could -- they could issue
17 the building permit if, in fact, it was approved as part
18 of that parcel?

19 COUNCILMAN FREY: Bill, I think if you go
20 through the town manager, we would agree with that.

21 UNKNOWN SPEAKER: Yes.

22 UNKNOWN SPEAKER: Okay. Because I think

23 that as I understand it -- and I wasn't the one
24 personally who went over to get the permits, but

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1 somebody from our office did -- but they believed what I
2 was told is that turning represented a substantial
3 change and that they couldn't issue a permit.

4 Now, if it wasn't approved, I agree, no
5 permit. But if it's just the orientation of it to a
6 different road, you don't see a problem with us --

7 MAYOR POST: No, no. Let's go through the
8 town manager regarding that. No, I don't.

9 UNKNOWN SPEAKER: Okay.

10 MAYOR POST: And as well, if there is a need
11 to get this on a quicker agenda for the -- because I
12 know we are going to have it with a charter and so
13 forth. I mean I'm certainly willing, if we can get this
14 matter cleared up, to bring it sooner than January, the
15 January meeting.

16 UNKNOWN SPEAKER: Okay. Thank you.

17 UNKNOWN SPEAKER: Is there a --

18 MAYOR POST: Okay. Thank you. Okay. All
19 right. We have a motion and a second to adjourn. You
20 want executive session? We don't need one. I asked
21 him. We have a motion and a second to adjourn. All in
22 favor, say aye.

23 COUNCILMAN FREY: Aye.

24 COUNCILMAN HARRIS: Aye.

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1 COUNCILMAN DVORNICK: Aye.

2 COUNCILWOMAN MELSON: Aye.

3 COUNCILWOMAN BETTS: Aye.

4 MAYOR POST: Aye. Motion carried.

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1 State of Delaware.)
2 Kent County)

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5 CERTIFICATE OF REPORTER

6 I, Cheryl A. Anthony, Delaware Certified Shorthand
7 Reporter and Notary Public, do hereby certify that the
8 foregoing record, pages 1 to 87 inclusive, is a
9 stenographic transcript of a tape-recording held on
10 December 4, 2006, in the above-captioned matter.

11

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 and seal this ____ day of _____ 2007.

14

15

16

17

18 _____
19 Cheryl A. Anthony
20 Delaware CSR
21 Certification No. 107-PS
22 (Permanent Certification)

23

24

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